Response to the Debtors' Twenty-Third Omnibus Objection

Sears Holdings Corporation, et al., Debtors

United States Bankruptcy Court
Southern District of New York
300 Quarropas Street, Room 248
White Plains, NY 10601

Case Number: 18-23538 (RDD)

February 20, 2021
Claimant: Joohee Paek
5419 W Babcock Ave.
Visalia, CA 93291
559-730-8068
jooheepaek@gmail.com

Claim amount: $20,724 (Affected Proof of Claim No. 12053)

Your honor,

As of Feb 6, 2016, I have cumulated 314 vacation hours (please see attachment 1). Due to the severe shortage of pharmacists in my district, I was not able to take vacation for a long period of time. The district manager at that time told me that he would work with me and that I could use those hours later year when I planned to visit my mother in Korea.

Unfortunately, we got a new district manager, and I was told that I would lose vacation hours if I didn't use them. I have contacted HR asking for cashing out my vacation hours; however, the HR specialist told me that Kmart does not have vacation cash out policy and that I needed to work with my district manager. I have enclosed a copy of the email thread (please see attachment 2).

The earnings and deductions summary on Feb 26, 2016 shows new physical year vacation hours. As it shows, I lost the entire 314 vacation hours I cumulated (please see attachment 3).

Since my first district manager left, we had 3 new district managers within short period of time. None of them helped me with my lost vacation hours.

When I sought help from the California Labor Department, I was told that I couldn't file a claim unless I was separated from the company. Eventually, I got laid off.

According to California Labor Law, vacation hours are earned income that the employer must pay. I filed a claim with the California Labor Department on July 3, 2018 (please see attachment 4). I was scheduled for a hearing on Sep 21, 2018 (please see attachment 5); however, Sears Holdings Corp., et al. filed a

Chapter 11 bankruptcy. My hearing was subsequently canceled, and the California Labor Department recommended me to file a claim through the bankruptcy court.

Further, California Labor Code Section 203 states that Sears Holdings Corp shall be responsible for Waiting Time Penalties ($20,295), which I didn't include in my claim.

Please do not allow Sears Holdings Corp. to disallow or expunge my claim.

Respectfully,

Joohee Paek

My Personal Information   Page 1 of 2

SEARS HOLDINGS

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MPI - My Personal Information

Home | Name/Address | Emergency Contacts | Associate Discount | My Pay | Direct Deposit |
W-4 Federal & State Withholding | SHC Policy | My Electronic Documents |

JOOHEE PAEK   Click for Employee ID   Click for your HR Representative

Fri Aug 05 16:45:19 EDT 2016

Select Check Date: 02/12/2016 ... $1,840.59 ∨

$1,840.59 was deposited in checking account # XXXXXX3628

EARNINGS AND DEDUCTIONS SUMMARY		
Description	Current Period	Y-T-D
Gross Earnings	$2,751.87	$8,560.53
Net Earnings	$1,840.59	$5,693.14
Before and After Tax Deductions	$51.56	$154.68
Taxes	$859.72	$2,712.71
PAID TIME OFF/ANNIVERSARY HOURS		
Vacation As of	02/06/2016	
Earned	344.00	
Taken	30.00	
Bank	314.00	
Anniversary Hours	.00	
EMPLOYEE INFORMATION		
Employee ID	81024084418	
Department	04721069	
Location	04721	
TAX DATA		

Description	Federal	State
State		CA
Marital Status	S	S
Allowances	1	0
Addl. Pct	0	0
Addl. Amt	.00	.00

$1,840.59 was deposited in checking account # XXXXXX3628

PAY ADJUSTMENTS ARE FOR THE PRIOR PAY PERIOD UNLESS OTHERWISE
NOTED. PLEASE CALL 1-888-887-3277 FOR FURTHER EXPLANATION OF THIS
STATEMENT OR SEE http://88sears.com/comp/pay.

Please call 1-888-887-3277 for questions about this statement.

For further explanation of this wage statement, see 88Sears.com

https://web.searshc.com/aos/logon.do   8/5/2016

joohee.paek@searshc.com :: RE: vacation hours   Page 1 of 1

Subject	**RE: vacation hours**
From	Salinas, Samantha <Samantha.Salinas@searshc.com>
To	Paek, Joohee (KmartRetail) <joohee.paek@searshc.com>
Cc	Salinas, Samantha <Samantha.Salinas@searshc.com>, Goodhue, Robert J <Robert.Goodhue@searshc.com>
Date	23.03.2016 07:41

SEARS HOLDINGS

+ Robert

Joohee – please work with your District Manager, Robert Goodhue, to help you track your vacation & schedule time off. We do not have a policy that states vacation is paid out if unused. In the state of California, associates are able to carry over 1.5 times their annual equivalent of vacation. Please click HERE to access the California Vacation Policy for Kmart Pharmacists.

Thank you,
Sam

Samantha Salinas
HR Specialist - Pharmacy

Sears Holdings Corporation
3333 Beverly Road
Hoffman Estates, IL 60179
(P): 847-286-2477
(F): 847-747-1065
(E): Samantha.Salinas@searshc.com

kmart pharmacy

From: Paek, Joohee (KmartRetail)
Sent: Tuesday, March 22, 2016 4:48 PM
To: Salinas, Samantha
Subject: vacation hours

Hello Samantha, Could you please take a look at my previous year vacation hours? I wasn't informed that we would lose if we don't take vacation. It has been short staffed in our region and I wasn't able to take any vacation. Furthermore, I thought we could carry over to the following year, so I was planning to use hours this year. My district manager was just here at my store, and he informed that I could carry over 1.5 times of my equivalent, which will be 60 hours. If I'm not able to carry over vacation hours, I should be able to cash them out. Please advise. Thanks, Joohee Paek

My Personal Information

SEARS HOLDINGS

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MPI - My Personal Information

Home | Name/Address | Emergency Contacts | Associate Discount | My Pay | Direct Deposit |
W-4 Federal & State Withholding | SHC Policy | My Electronic Documents |

JOOHEE PAEK   Click for Employee ID   **Click for your HR Representative**

Fri Aug 05 16:45:39 EDT 2016

Select Check Date: | 02/26/2016 ... $1,836.12 ∨ |

$1,836.12 was deposited in checking account # XXXXXX3628

EARNINGS AND DEDUCTIONS SUMMARY

Description	Current Period	Y-T-D
Gross Earnings	$2,743.95	$11,304.48
Net Earnings	$1,836.12	$7,529.26
Before and After Tax Deductions	$51.56	$206.24
Taxes	$856.27	$3,568.98

PAID TIME OFF/ANNIVERSARY HOURS

Vacation As of	02/20/2016
Earned	40.00
Taken	.00
Bank	40.00
Anniversary Hours	.00

EMPLOYEE INFORMATION

Employee ID	81024084418
Department	04721069
Location	04721

TAX DATA

Description	Federal	State
State		CA
Marital Status	S	S
Allowances	1	0
Addl. Pct	0	0
Addl. Amt	.00	.00

$1,836.12 was deposited in checking account # XXXXXX3628

PAY ADJUSTMENTS ARE FOR THE PRIOR PAY PERIOD UNLESS OTHERWISE
NOTED. PLEASE CALL 1-888-887-3277 FOR FURTHER EXPLANATION OF THIS
STATEMENT OR SEE http://88sears.com/comp/pay.

Please call 1-888-887-3277 for questions about this statement.

For further explanation of this wage statement, see 88Sears.com

https://web.searshc.com/aos/logon.do

8/5/2016

97871969

LABOR COMMISSIONER, STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS – DIVISION OF LABOR STANDARDS ENFORCEMENT

CLEAR	PRINT

Initial Report or Claim

FOR OFFICE USE ONLY			
Taken by:	Office:		Case #:

PLEASE PRINT OR TYPE ALL INFORMATION
Refer to the accompanying Guide to assist you in filling out this form.

Date filed:	SIC #:
RCI Complaint: ☐ YES ☐ NO	Action:

PRELIMINARY QUESTIONS

1. Is your claim about a public works project? [If your answer is "YES," STOP here, DO NOT FILL OUT THIS FORM, and fill out the "PW-1" claim form instead. If your answer is "NO," proceed with this form.]

2. Have you filed a **retaliation complaint** against your employer with the Labor Commissioner?

☐ YES, on: _____ / _____ / _____
         Month   Day   Year

☒ NO [If you have been retaliated against, you may file a retaliation complaint by filling out another form, "DLSE FORM 205."]

3. Is there a union contract covering your employment?
☐ YES   [If "YES," attach a copy of the Collective Bargaining Agreement.]
☒ NO

4. Are other employees also filing wage claims against your employer?   ☐ YES   ☐ NO   ☒ I DON'T KNOW

Part 1: LANGUAGE ASSISTANCE & REPRESENTATION

5a. Do you need an interpreter? ☐ YES ☒ NO	5b. If you checked "YES" to Box 5a, enter the language needed

6a. If you are being assisted with your claim by a lawyer or other advocate, enter your ADVOCATE'S NAME and ORGANIZATION	6b. ADVOCATE'S PHONE ( )

6c. Your ADVOCATE'S MAILING ADDRESS (Number, Street, Floor, Suite)	CITY	STATE	ZIP CODE

Part 2: YOUR INFORMATION

7. Your FIRST NAME	8. Your LAST NAME	9. HOME PHONE	10. OTHER PHONE	11. BIRTH DATE
Joohee	Paek	(559) 730-8068	( )	09/09/1969

12. Your MAILING ADDRESS (Street Number, Street Name, Apartment Number)	CITY	STATE	ZIP CODE
5419 W. Babcock Ave.	Visalia	CA	93291

Part 3: CLAIM FILED AGAINST (EMPLOYER INFORMATION)

13. EMPLOYER / BUSINESS NAME(S)	14. EMPLOYER'S VEHICLE LICENSE PLATE #	15. EMPLOYER PHONE
Sears Holdings Corporation		(847) 286-8477

16. ADDRESS of EMPLOYER / BUSINESS (Street Number, Street Name, Floor, Suite):	CITY	STATE	ZIP CODE
3333 Beverly Road	Hoffman Estates	IL	60179

17. ADDRESS where you worked, if different from Box 16 (Number, Street, Floor, Suite):	CITY	STATE	ZIP CODE
25 W. Polk St.	Coalinga	CA	93210

18. NAME of PERSON IN CHARGE (First Name, Last Name)	19. JOB TITLE / POSITION of PERSON IN CHARGE
Robert Goodhue	District Manager

20. TYPE OF BUSINESS	21. TYPE OF WORK PERFORMED	22. TOTAL NUMBER OF EMPLOYEES	23. EMPLOYER STILL IN BUSINESS? ☒ YES ☐ NO ☐ DON'T KNOW
Pharmacy	Pharmacist	2	

24. Check which box describes your employer, if you know: ☒ CORPORATION   ☐ INDIVIDUAL   ☐ PARTNERSHIP   ☐ LLC   ☐ LLP

DLSE FORM 1 / WAGE ADJUDICATION (REV. 7/2012)   *(Page 1 of 3)*

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PRINT YOUR NAME: __Joohee Paek__

Part 4: FINAL WAGES / BOUNCED CHECKS

25. DATE OF HIRE	26. Check which box applies to you:
5 / **11** / **2014** Month Day Year	☐ Still working for employer ☐ QUIT on ___/___/___ Month Day Year ☒ DISCHARGED on **7**/**23**/**2016** Month Day Year ☐ Other (specify): _____

27a. If you QUIT, did you give **72 hours notice** before quitting? ☐ YES ☐ NO	27b. If you QUIT, have you received your final payment of wages including all wages owed? ☐ YES, on: _____ / _____ / _____ Month Day Year ☐ NO

28. If you were **DISCHARGED**, have you received your final payment of wages including all wages owed?

☐ YES, on: _____ / _____ / _____
         Month   Day   Year

☒ NO

29a. How were your wages paid? ☒ BY CHECK ☐ BY CASH ☐ BY BOTH CASH & CHECK ☐ OTHER: _____	29b. If paid by check, did any of your paychecks "bounce" (for example, paycheck could not be cashed because employer has insufficient funds)? ☐ YES ☒ NO

Part 5: HOURS YOU TYPICALLY WORKED

30. Check which box applies: ☒ My work hours and days of work were usually the same each week that I worked.

☐ My work hours and/or days of work varied per week or were irregular. **If you checked this box and you are claiming unpaid wages or meal and rest period violations, you should also fill out and submit the DLSE FORM 55.**

31. If your work hours and days of work were usually the same each week, give your **BEST ESTIMATE** below of the hours you usually worked and any time you took for a duty-free meal period during your **TYPICAL** workweek. **DO NOT fill this out if your work hours were too irregular to estimate a typical or average workweek (instead fill out the DLSE Form 55).**

	TIME WORK STARTED	TIME WORK ENDED	1st MEAL START TIME (if applicable)	1st MEAL END TIME (if applicable)	2nd MEAL START TIME (if applicable)	2nd MEAL END TIME (if applicable)	ONLY IF YOU WORKED A SPLIT SHIFT:	
DAY 1 of your workweek:	9:00 ☒am ☐pm	7:00 ☐am ☒pm	1:30 ☐am ☒pm	2:00 ☐am ☒pm	☐am ☐pm	☐am ☐pm	1st shift ended at ☐am ___ ☐pm	2nd shift started at ☐am ___ ☐pm
DAY 2 of your workweek:	9:00 ☒am ☐pm	7:00 ☐am ☒pm	1:30 ☐am ☒pm	2:00 ☐am ☒pm	☐am ☐pm	☐am ☐pm	1st shift ended at ☐am ___ ☐pm	2nd shift started at ☐am ___ ☐pm
DAY 3 of your workweek:	9:00 ☒am ☐pm	7:00 ☐am ☒pm	1:30 ☐am ☒pm	2:00 ☐am ☒pm	☐am ☐pm	☐am ☐pm	1st shift ended at ☐am ___ ☐pm	2nd shift started at ☐am ___ ☐pm
DAY 4 of your workweek:	9:00 ☒am ☐pm	7:00 ☐am ☒pm	1:30 ☐am ☒pm	2:00 ☐am ☒pm	☐am ☐pm	☐am ☐pm	1st shift ended at ☐am ___ ☐pm	2nd shift started at ☐am ___ ☐pm
DAY 5 of your workweek:	☐am ☐pm	☐am ☐pm	☐am ☐pm	☐am ☐pm	☐am ☐pm	☐am ☐pm	1st shift ended at ☐am ___ ☐pm	2nd shift started at ☐am ___ ☐pm
DAY 6 of your workweek:	☐am ☐pm	☐am ☐pm	☐am ☐pm	☐am ☐pm	☐am ☐pm	☐am ☐pm	1st shift ended at ☐am ___ ☐pm	2nd shift started at ☐am ___ ☐pm
DAY 7 of your workweek:	☐am ☐pm	☐am ☐pm	☐am ☐pm	☐am ☐pm	☐am ☐pm	☐am ☐pm	1st shift ended at ☐am ___ ☐pm	2nd shift started at ☐am ___ ☐pm

DLSE FORM 1 / WAGE ADJUDICATION (REV. 7/2012)   (CONTINUED – Page 2 of 3)

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Part 6: PAYMENT OF WAGES

32. Were you paid or promised a FIXED amount of wages per pay period, no matter how many hours you worked (for example, $400 per week, regardless of how many hours you worked)?

☐ YES: I was paid $ _____ per ☐day ☐week ☐every 2 weeks ☐month ☐semi-monthly
☐ other (specify): _____

I was promised $ _____ per ☐day ☐week ☐every 2 weeks ☐month ☐semi-monthly
☐ other (specify): _____

☒ NO

33a. Were you an HOURLY employee?	33b. If you were an HOURLY employee, were you paid or promised more than one hourly rate (based on the hours you worked or different job tasks)?
☒ YES: I was paid $ 66.00 per hour. I was promised $ _____ per hour. ☐ NO	☐ YES (describe): _____ ☒ NO

34. Were you paid by PIECE RATE? ☐YES ☒NO	35. Were you paid by COMMISSION? ☐YES ☒NO

Part 7: WAGES, COMPENSATION & PENALTIES OWED

36. CLAIMS (Check all boxes below that apply)	CLAIM PERIOD: START DATE (Month/ Day/ Year)	CLAIM PERIOD: END DATE (Month/ Day/ Year)	AMOUNT EARNED / CLAIMED
☐ REGULAR WAGES (for non-overtime hours)			$
☐ OVERTIME WAGES (including double time)			$
☐ MEAL PERIOD WAGES			$
☐ REST PERIOD WAGES			$
☐ SPLIT SHIFT PREMIUM			$
☐ REPORTING TIME PAY			$
☐ COMMISSIONS ***			$
☒ VACATION WAGES ***	5/17/2015	2/12/2016	$ 20,724
☐ BUSINESS EXPENSES			$
☐ UNLAWFUL DEDUCTIONS			$
☐ OTHER (Specify):			$
ENTER SUBTOTAL (add all Amounts Earned/Claimed):			$ 20,724
ENTER TOTAL AMOUNT PAID:			$ 0
GRAND TOTAL OWED [Subtotal minus Total Amount Paid]:			$ 20,724

*** Additional DLSE form should be submitted if you are making this claim. See "Instructions for Filing a Wage Claim."

37. Check box(es) if you are claiming: ☐ Waiting time penalties [Labor Code §203]

☐ Penalties for "bounced" checks (checks issued with insufficient funds) [Labor Code §203.1]

I hereby certify that the information I have provided is true to the best of my knowledge and/or recollection. The amounts claimed are based on my best estimates at this time and may be adjusted based on further information, or based on assistance with my claim provided by DLSE.

Signed: _____   Date: 7/3/2018

Print Name: Joohee Paek

DLSE FORM 1 / WAGE ADJUDICATION (REV. 7/2012)   (CONTINUED – Page 3 of 3)

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STATE OF CALIFORNIA
Department of Industrial Relations
Labor Commissioner's Office
770 E Shaw Ave, Ste 222
Fresno, CA 93710
Email: laborcomm.wca.fre@dir.ca.gov
Fax: (559) 248-8415

PLAINTIFF:
    Joohee Paek
    5419 W BABCOCK AVE
    VISALIA, CA 93291

DEFENDANT:
    Sears Holdings Management Corporation, a Foreign Corporation
    3333 BEVERLY RD
    HOFFMAN EST, IL 60179

State Case Number WC-CM-599344	NOTICE OF CLAIM AND CONFERENCE

ALL PARTIES in the above matter **ARE TO APPEAR** for a conference to be held in the Office of the State Labor Commissioner as follows:

PLACE: 770 E Shaw Ave, Ste 222, Fresno, CA 93710
DATE: Friday, September 21, 2018
TIME: 10:00 AM

The purpose of this conference is to discuss the validity and to settle the claim filed with this Division by the Plaintiff shown above alleging non-payment of:

CLAIM	Amount Earned or Accrued	Less Amount Paid	Balance Due
VACATION WAGES -- Plaintiff claims 314 hours of accrued vacation that remained unused at the time of plaintiff's termination of employment on 7/23/16. Plaintiff's final rate of pay was $66.00 per hour.	$20,724.00		$20,724.00
WAITING TIME PENALTIES – If an employer willfully fails to pay, in accordance with Labor Code Section 201, any wages of an employee who is discharged, the wages of the employee continue as a penalty from their due date at the same rate until paid, up to a maximum of 30 days. (See Labor Code Section 203) Plaintiff was discharged on 7/23/16, on which date wages were due. Plaintiff claims waiting time penalties for 30 days' worth of wages, based on a rate of pay of $676.50 per day. Daily rate of pay is calculated as follows: 8 regular hours at $66.00 per hour = $528.00; 1 overtime hour at $99.00 = $148.50; Total = $676.50	$20,295.00		$20,295.00
TOTAL CLAIMED			$41,019.00

This notice constitutes demand on behalf of the Plaintiff that all wages due be mailed immediately to the Labor Commissioner at the address listed above.

WCA 14 PLT Notice of Claim & Conference (Rev. 07/13)

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